DETAILED ACTION

1.   The appeal brief received on 05/27/2009 has been considered.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mark Nusbaum on 10/27/2009.

The application has been amended as follows:

Replace claim 1 with the following - -

1.   A game apparatus operable to execute a game music generating program stored on a storage medium, said game apparatus comprising:

a phrase data storage area that stores different kinds of a plurality of phrase data, based on a musical characteristic, wherein said phrase data designate a length and a pitch of a pronunciation of a tone color;

a rhythm-pattern storage area that stores at least one kind of rhythm pattern data, constructed of rhythm data, that designate a length in performance for performing a phrase, and a timing of said phrase;

game music-data reproducing programmed logic circuitry that reproduces game music

data constructed of at least one part;

a tone storage area that stores data of a sound output according to said music data;

a continuous counter for counting the number of times the same phrase has been selected;

and

sound outputting programmed logic circuitry that outputs a sound according to the music

data reproduced by said music-data reproducing programmed logic circuitry, wherein

said game music generating program is capable of being executed by a processor of said

game apparatus to perform the steps of:

randomly selecting one kind of the phrase data stored in said phrase data storage area

including incrementing said continuous counter when the phrase data selected last time and the

phrase data selected this time agree and re-selecting the phrase data when a count value of said

continuous counter is larger than a predetermined value;

selecting one rhythm data from one kind of the rhythm pattern data stored in said rhythm-

pattern storage area according to a predetermined rule; and

generating the music data from the phrase data selected by said randomly selecting one

kind of the phrase and the rhythm data selected by said selecting one kind of rhythm data. --

Replace claim 5 with the following - -

5.   A game apparatus according to claim 1, further comprising at least one operating control

that inputs an operation from a player; and

performance-change data storage area that stores performance-change data that changes a performing method of a game music, wherein said game music generating program is capable of being executed by said processor of said game apparatus to further perform the steps of:

storing performance-change data corresponding to at least the operation of said at least one operating control in said performance-change data storage area; and

applying a predetermined change to said game music data, corresponding to the performance-change data, stored in said performance-change data storage area by said storing performance-change data. --

Replace claim 6 with the following --

6.   A game apparatus according to claim 5, wherein,

applying a predetermined change includes changing a tempo of said game music data according to said performance-change data. --

Replace claim 7 with the following --

7.   A game apparatus according to claim 1, further comprising a period designating data storage area that stores period designating data that designates a performing period and a performance suspended period of the phrase, wherein

said game music-data reproducing programmed logic circuitry suspends a reproduction of the game music data in the performance suspended period based on said period designating data, and

allows said processor to execute the step of counting the performing period and the performance suspended period designated by said period designating data, by the number of times the rhythm data has been selected. --

Replace claim 8 with the following --

8.   A game music generating method of a game apparatus provided with a phrase data storage area that stores different kinds of a plurality of phrase data, based on a musical characteristic, wherein said phrase data designate a length and a pitch of a tone,

a rhythm-pattern storage area that stores at least one kind of rhythm pattern data constructed of rhythm data that designate a length in performance for performing a phrase, and a timing of said phrase;

game music-data reproducing programmed logic circuitry that reproduces game music data constructed of at least one part;

a tone storage area that stores data of a sound, output according to said game music data;

a continuous counter for counting the number of times the same phrase has been selected; and

sound outputting programmed logic circuitry for outputting the sound according to the game music data reproduced by said game music-data reproducing programmed logic circuitry, said game music generating method comprising:

(a) randomly selecting one kind of the phrase data stored in said phrase data storage area including incrementing said continuous counter when the phrase data selected last time and the

phrase data selected this time agree and re-selecting the phrase data when a count value of said

continuous counter is larger than a predetermined value;

(b) selecting one rhythm data from one kind of the rhythm pattern data stored in said

rhythm-pattern storage area; and

(c) generating the game music data from the phrase data selected by said step (a) and the

rhythm data selected by said step (b). --

Replace claim 9 with the following --

9.   A game apparatus that performs a game music corresponding to at least a proceeding

situation of a game, comprising:

a phrase data storage area that stores different kinds of a plurality of phrase data, based

on a musical characteristic, wherein said phrase data designate a length and a pitch of a tone;

a rhythm-pattern storage area that stores at least one kind of rhythm pattern data,

constructed of rhythm data, that designate a length in performance for performing a phrase and a

timing of said phrase;

game music-data reproducing programmed logic circuitry that reproduces game music

data constructed of at least one part;

a tone storage area that stores data of a sound output according to said game music data;

a continuous counter for counting the number of times the same phrase has been selected;

phrase selecting programmed logic circuitry that randomly selects one kind of the phrase data

stored in said phrase data storage area including incrementing said continuous counter when the

phrase data selected last time and the phrase data selected this time agree and re-selecting the

phrase data when a count value of said continuous counter is larger than a predetermined value;

rhythm-pattern selecting programmed logic circuitry that selects one rhythm data from

one kind of the rhythm pattern data stored in said rhythm-pattern storage area according to a

predetermined rule;

game music generating programmed logic circuitry that generates said game music data

from the phrase data selected by said phrase selecting programmed logic circuitry and the rhythm

data selected by said rhythm-pattern selecting programmed logic circuitry, and

sound outputting programmed logic circuitry that outputs the sound according to the

game music data reproduced by said game music-data reproducing mechanism. --

Replace claim 10 with the following --

10.   A method for generating a sequence of game music in a game apparatus, comprising the

steps of:

providing at least one set of rhythm data;

providing at least one set of phrase data;

selecting a set of rhythm data from the at least one set of rhythm data;

selecting a set of phrase data from the at least one set of phrase data;

counting the number of times the currently selected set of phrase data has been

continuously selected;

re-selecting a new set of phrase data if the currently selected phrase data has been

continuously selected more than a predetermined number of times, and

generating game music data from the selected rhythm data and the selected phrase data for output via the game apparatus. --

2.   Claims 1 and 8-10 are allowed.

3.   The following is an examiner's statement of reasons for allowance: Claims 1 and 8-10 distinguish over the prior art of record in that the Applicant specifically claims a game music generating program stored on a storage medium comprising phrase data, rhythm pattern data, music data, and a continuous counter for counting the number of times the same phrase has been selected. The teaching of the Applicant's claims are different from the prior art in that the prior art do not teach randomly selecting one kind of the phrase data stored in said phrase data storage area including incrementing said continuous counter when the phrase data selected last time and the phrase data selected this time agree and re-selecting the phrase data when a count value of said continuous counter is larger than a predetermined value.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

4.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adetokunbo O. Torimiro whose telephone number is (571) 270-1345. The examiner can normally be reached on Mon-Fri (8am - 4pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hotaling can be reached on (571) 272-4437. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/A. O. T./

Examiner, Art Unit 3714

/John M Hotaling II/

Primary Examiner, Art Unit 3714